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Board Meeting – October 7, 2013

21st Floor – Conference Room 1

Present Board Members:

- Walter White, Executive Office of Public Safety Designee, Chair (WW)
- Myra Berloff, Massachusetts Office on Disability (MB)
- Raymond Glazier, Executive Office on Elder Affairs Designee (RG)
- Carol Steinberg, Member (CS)

and

- Thomas Hopkins, Executive Director
- Kate Sutton, Program Coordinator/Clerk for Proceedings (KS)

Members Not Present:

- Andrew Bedar, Member (AB)
- Gerald LeBlanc, Member (GL)
- Mark Trivett, Member (MT)
- Diane McLeod, Vice Chair (DM)

- Meeting began at 9:35 a.m.

1) **Discussion:** Florist, 636 College Highway, Southwick (C09-077 & V13-163)

MB - motion to open discussion on the case, which was scheduled for today at 1 p.m. but had to be rescheduled due to a family medical issue

CS - second – carries

MB - in light of the health challenges and in order to not make them come into Boston, would like to see the accommodation policy that they will have in the accessible greenhouse which will allow them access to the goods and service, submitted within 30 days receipt of the decision of the Board

Gerald LeBlanc, Member (GL) – now present

CS - second - carries

CS - expedite

MB - second – carries

2) Discussion: YMCA, 1 Sewall St., Salem (V13-198)

TH - originated as a request for one variance, for the reinstallation of a historic balcony
- had to go back and do a 30% review
- new submittal, many requests for variances
- hearing would be best

CS - hearing

MB - second – carries

3) Incoming: Alpha Theta Sigma Chi House, 532 Beacon St., Boston (V13-263)

TH - EXHIBIT – variance application
- historic 5 story residential building for MIT students
- spending over 30%
- multiple requests

CS - hearing

GL - second - carries

4) Incoming: Airpack Admin. Building, 67 Airpack Drive, East Falmouth (V13-266)

TH - EXHIBIT – variance application
- new construction
- seeking variance for providing accessible entrance
- prefab building
- residential area with landing

MB - deny

CS - second – carries

MB - contact Steve Kennealy to discuss the prefab structure

GL - second - carries

5) Incoming Discussion: Housing Authority, 4 Foster St., Pepperell (V13-260)

TH - EXHIBIT – follow-up to 9/23/13 decision to deny allowance of stannah stair lift systems at outside stair

- they are proposing to provide accommodations in lieu of vertical access, while the elevator is being modernized

MB - grant as proposed, based on the accommodations proposed

RG - second - carries

6) Incoming: 6-Family, 615 East 6th St., South Boston (V13-264)

TH - EXHIBIT – variance application

- new construction

- seeking variance to 25.1 for the front entry of the building, no room at the front for ramp or lift

- proposing to provide access to the first floor at the rear, next to the parking

- the building is built, height of the building was set to meet existing height of adjacent building

MB - path of travel to the back of the building from the sidewalk

CS - who maintains the alley to the back?

TH - the condo association

MB - this architect has been before the Board before, he should have known to come to the Board before this was built

CS - deny

MB - second - carries

7) Incoming: The Match Charter School, 215 Forrest Hills St., Jamaica Plain (V13-257)

TH - EXHIBIT – variance application

- 3 story public charter school

- remodeling building systems, new toilet rooms, site work

- spending over 30%

- seeking variance for the time on the elevator, since a new controller is required, since the original one did not work

- therefore they need until 12/1/13, since it is taking 4-8 weeks to do

GL - grant to 12/1/13

RG - second – carries

8) Incoming: 603 Concord Ave. & 19 Wheeler St., Cambridge (V13-262)

TH - EXHIBIT – variance application

- new construction, 61 new apartments, retail at the first floor, and parking at first and below grade
- seeking variance for the threshold designs at the balconies for all units
- slopes up to the door

MB - grant for this use, as proposed

GL - second – carries

9) Discussion: Exchange Hall, 2 School St., Acton (V11-110)

TH - EXHIBIT – submittal from owner Glen Berger

- explained that granted all, except for the use of the stage and required it to be employee only
- he is requesting the use of the stage when needed, based on the fact that people can be accommodated and that the installation of access to the stage would take a good portion of the room and would diminish the historic nature of the building (19 foot ramp plus 5 foot by 5 foot platform)

CS - appreciate everything that he has done with the building, but would like to see access to the stage and reaffirm the decision from the previous meeting, submit information about portable lift/ramp by next meeting

MB - second

- what about portable lifts?

WW - why can't they just move the whole presentation to the floor, and not have anyone on the stage

- no stairs to the stage
- carries

10) Incoming: Commercial Building 66 Central St., Wellesley (V13-267)

TH - EXHIBIT – variance application

- office space converted to exercise space
- change in use, but no partial application evaluation submitted
- seeking time variance for installation of LULA
- lease space where LULA could be installed is available on 1/1/18

GL - deny

MB - second - carries

11) Incoming Discussion: Cross Fit Ramp, 106 Adams St., Medfield (V13-245)

TH - on 9/9/13 continued the request to find out more information about the slope of the ramp

- the main entrance is accessible
- the side entrance has stairs
- rear entrance is where the ramp with a steep slope, which will be used as a piece of equipment at

11.4%

CS - grant

MB - second – carries

12) Discussion: Selegman House, Amherst College, 67 North Hampton St., Amherst (V12-099)

- TH - EXHIBIT – submittal of amendment to the original variance
- amendment is for the ramp at the exterior north porch
 - seeking variances for 24.5.5, 2 1/8” provided

MB - grant

GL - second - carries

- TH - 24.5.6, the shape of the handrails are not round or oval

CS - grant

RG - second -carries

- TH - curve in the ramp at the landing, 24.10

CS - grant

GL - second – carries

- TH - east ramp, seeking variance for the size and the shape of the handrails (24.5.5 and 24.5.6)

CS - grant both

GL - second – carries

13) Discussion: Dormitory for the disabled, 40 Chase St., Newton (V13-197)

- TH - EXHIBIT – new submittal from petitioners
- supposed to discuss this on the 23rd, but due to loss of quorum, had to push it to today
 - previously ordered that they submit accommodation plan
 - still need to discuss second floor access and lack of access at the second floor kitchen
 - accommodation policy submitted (read into the record)

(Tape)

MB - grant relief for the lack of access to the third floor, provided that they create access into the building and up to the second floor, to be completed by the end of the project

CS - second – carries

TH - also seeking variances for second and third floor common bathrooms, proposing to provide grab bars, but will not have the dimensions required for Group 2

MB - *grant the variances for the second and third bathrooms for all but one at the second floor, and if dimensional requirements cannot strictly be met, then come back to the Board*

RG - second – carries

TH - base cabinets at existing kitchen at first floor, proposing to modify if need be for a tenant

MB - *deny the variance for the first floor kitchen*

RG - second – carries

TH - 45.1, seeking variance for the second floor kitchen

MB - *deny full relief and ask them to come back with partial modifications to the kitchen*

RG - second - carries

- Brief Break -

14) Hearing: The Last Shot Restaurant, 559 Washington St., Stoughton (C13-033)

WW - call to order @ 11:00 a.m.

- introduce the Board

Mark Dempsey, Compliance Officer for the Board (MD)

Anthony Nalli, Owner of the Last Shot (AN)

WW - both sworn in

- EXHIBIT 1 – AAB1-28

MD - complainant, Building Inspector for the Town of Stoughton, had conflicting scheduled so could not attend today

- complaint filed based on the lack of working order of the vertical wheelchair lift

- as of September 24, 2013, no permits have been issued for the repair of the lift (AAB3)

- lift was installed in 2006, prior complaint to have the lift installed, when it was operated by a different owner

GL - AAB11, states certificate of inspection has been taken care of by the landlord of the property, and that the lift has been repaired and is fully operational

AN - landlord said that he was not responsible for the requesting of the certificate, so had to go back and forth about that for a bit

- the lift was repaired right away, but still needs inspection
- first complaint was in the winter months, since someone went up in the lift and it stopped halfway
- the lift is key operated, and in the process of converting that to a keyless operation
- a check for \$800 to the Commonwealth of Massachusetts in August of 2013 for the inspection
- the lift is working and is operated by the key
- was unaware of the change to require a key

GL - how do you know that someone is at the lift?

AN - the entrance is a few feet from the lift

MB - arrangements have been made to get the key removed

AN - not sure, up to the elevator company, but was told that the matter before the Board needed to be dealt with first

CS - keyless and in working order is important, needs to be available at all times

AN - understand that

CS - find in favor of the complainant

GL - second – carries

MB - building official tried to enter on July 19, 2013 at 9:45 p.m. (AAB7)

AN - saw that and not sure of why he could not get into the building
- the lift was probably locked and he could not get into the lift

MB - need to know when the key will be removed

CS - lift in working order, keyless, and open at all hours that the restaurant is open, and inspection of the lift, to be verified to the Board by December 1, 2013

MB - second – carries

15) Hearing: The Last Shot Restaurant, 559 Washington St., Stoughton (C13-033) – Cont'd

MB - reopen

GL - second – carries

MB - based on the photographs submitted of the lift, 18" not provided at the latch pull side of the door; needs to be verified by the building official, if found to be noncompliant, need to submit plans for compliance, which may include an automatic door opener at the lift; submitted within 30 days receipt of the decision

GL - second – carries with CS opposed

16) Incoming Discussion: Athletic Complex/Press Box, 17 Union St., Hingham (V13-239)

- TH
- 8/28/13 granted use of vertical wheelchair lift to the press box
 - EXHIBIT- request to grant use of the field and press boxes for an additional 30 days from present
 - hoping for elevator inspector to be at the property by 10/11/13
 - seeking issuance of certificate of occupancy prior to the lift installed

GL - grant additional time to allow the issuance of a temporary CO up to November 6, 2013

MB - second – carries

17) Incoming Discussion: Lincoln Village Office Building, 37 Pleasant Valley Dr., Worcester (V13-214)

- TH
- follow-up to previous Notice of Action of the Board regarding use areas
 - outside porch is an employee only space
 - submitted color-coded plan of use areas (employee vs. public) and affidavit
 - office building

MB - accept the plan, and require that the plan and the affidavit be recorded with the registry of deeds

GL - second – carries

18) Incoming: George Snow Building, 88 Lincoln St., Brockton (V13-274)

- TH
- EXHIBIT – variance application
 - reuse of existing building, but gutted
 - spending over 30%
 - 10 variance requests

CS - hearing

GL - second – carries

19) Incoming Discussion: Bourgeois & Leitch Hall, 71 & 111 Pawtucket St., Lowell (V13-158)

- TH
- originally came to the Board seeking to not make the basement levels accessible
 - EXHIBIT – submittal from petitioners, seeking additional time since delays with elevator projects
 - seeking to use the building with no vertical access until the mid-summer 2014, kids are proposed to be back into the building after this spring break of 2014

MB - allow until 8/1/13 for the elevators to be installed, inspected and operable by said date, with an accommodation policy in place in the interim that students with disabilities, or students with family members with disabilities be allowed first option for the first floor units

CS - second – carries

20) Incoming: Strip Mall, 55 Riverside Ave., Medford (V13-270)

- TH - EXHIBIT – variance application
 - improvement to CVS store, jurisdiction is work performed
 - creating accessible entrance at the rear of the building adjacent to the accessible parking
 - front entrance is currently not accessible
 - requested 3 variances, only need 2, 36 inches provided between the handrails

MB - grant for the width between the handrails, on the condition that they have compliant handrails
CS - second - carries

- TH - variance for extensions beyond the edge of the ramp sought, but not needed

- MB - what about automatic door opener at the ramp

MB - auto-opener at the door at the top of the ramp
GL - second – carries

MB - signage posted at the rear entrance door that notifies people that it is for CVS
CS - second – carries

21) Incoming Discussion: Kitchen Store, 1154 Mystic Ave., Medford (V13-135)

- TH - new application for expansion to the other portion of the building with a ramp that was in poor shape; previously ordered a site visit be conducted
 - required confirmation that the work at the ramp be done and the plan showing where the ramp leads too within the store
 - need to schedule a hearing, since no confirmation has been submitted in response to the previous orders of the Board

MB - schedule a hearing due to the lack response and compliance with an order of the Board
CS - second – carries

- LUNCH BREAK –

Andrew Bedar, Member (AB) – now present

22) Incoming Discussion: Press box at Watkins Field, 200 Catherine St., Gardner (V13-236)

- TH - originally reviewed on August 26, 2013, regarding the lack of access to the press box; variance denied
 - EXHIBIT – new submittal of plan for ramp to press box

GL - accept the plan

CS - *second - carries*

MB - *work done by 9/1/13*

AB - *second – carries*

23) Incoming: Dental Office, 418 Mass. Ave., Acton (V13-269)

TH - EXHIBIT – variance application

- water damage repair, which involves the remodel of three rooms, bathroom, just removing sheetrock
- size of the existing toilet room is 65” by 79”

CS - can they add grab bars?

CS - *no variance required for dimensions of toilet room, but would like compliant grab bars installed*

RG - *second – carries*

24) Advisory Opinion: Landmark School, Beverly; LULA question

TH - question about clearances when the doors open

- EXHIBIT – drawing A101

CS - *design complies*

RG - *second – carries*

25) Advisory Opinion: Clay Nissan, Newton – toilet room latch (30.6.1)

TH - latch is installed at 41” above the finished floor, lock is at 36”

- part b states that the lock be 36”
- building inspector believes that tolerances are applicable, since this is the approximate measurement

MB - tolerance allowed for, but not 6”
- can make the change in the regulations
- 48” is too high for a person of short stature

MB - *variance is required, since regulations state that the lock shall be at approximately 36”*

CS - *second – carries*

26) Incoming: Housing, 11 locations, scattered site portfolio, Salem (V13-268)

TH - EXHIBIT – variance application

- existing buildings, which are all occupied
- reconstruction/remodel
- over 30%

- seeking variances to entrances for a couple of the buildings (38 & 46 Peabody St)
- interior stair handrails, proposing wall side compliant (all buildings)

MB - grant 27.4 on the condition wall side compliant handrails as proposed

AB - second – carries

- TH - consistency of treads and risers 27.2 (41-43 Ward St., 46 Peabody St., 64.5 Harbor St.)
- existing stairs with winders at the corners

MB - grant for 27.2 as proposed, based on tech. infeasibility

AB - second – carries

- TH - railing shape (27.4.5), for front entrance stairs for all buildings, historic to the building

- CS - one-step entrances currently don't show handrails

CS - grant as proposed

RG - second – carries

27) Incoming: Housing, 11 locations, scattered site portfolio, Salem (V13-268) – Cont'd

- TH - 46 & 38 Peabody Street entrances
- stairs are immediately adjacent to the sidewalk
 - there is an accessible entrance at the rear
 - ramps at the rear

- MB - ramps correspond to the buildings?

CS - grant for the noncompliant entrances at 38 & 46 Peabody St., on the condition that they are built as plan

RG - second – carries

- TH - statement about the rear entrances
- existing sloped walkways with their own mailboxes

28) Incoming: Nesbit Inn, 21 Broad St., Nantucket (V13-259)

- TH - EXHIBIT – variance application
- application is incomplete regarding the spending and the assessed value, even though the application notes that the spending is over 30%
 - requested variance from section 9, when variance requires section 8

CS - continue for more information

RG - second

- MB - we cannot accept the application, since it is incomplete*
CS - amend to MB's motion
RG - second – carries

29) Incoming: Somerville Sidewalks, sidewalk width at 7 Wyatt St., Somerville (V13-271); Sidewalk at Albion Terrace, intersects with Albion St., Somerville (V13-272)

- TH - Wyatt St., requesting variance for width of sidewalk which is 32"
- Albion Terrace, requesting variance for sidewalk width, which is 29.5" at one location
- Albion Terrace is 90 feet long and is a dead-end with only three houses on the street
- letter from Eileen Feldman stating that application was submitted after construction at the sidewalk was completed, no proof of accessible sidewalks beyond the area in question on Albion Terrace

RG left the room

- MB - why not a tree grate at the tree issue

- CS - where is the curb cut that allows you to cross the street?

MB - grant the size of the sidewalk along Wyatt St. at the tree, on the condition that a tree grate is installed

AB - second

CS - where is the curb cut? On the plan
- carries with RG not present

- TH - dead end terrace at Albion Terrace

- MB - people can walk on the street
- and can access the sidewalk from the driveways along the sidewalk

MB - grant the variance for the sidewalk width

AB - second – carries with RG not present

RG now present

30) Hearing: Strathmore Mill Footbridge, 20 Canal Road, Turner Falls (V13-216)

- WW - called to order at 2 p.m.
- introduce the Board

Walter Ramsey, Montague Town Planner (WR)

- WW - WR sworn in

- EXHIBIT 1 – AAB1-16

David Jensen, Montague Building Inspector (DJ)

WW - DJ sworn in

WR - town owned mill building
- ¼ million square feet
- sandwiched between power canal and the Connecticut River, as shown on AAB16
- mill is connected only via the pedestrian bridge which was built in the 1900's
- Town has had the property since 2010, and been doing redevelopment studies since early 2000's
- vehicle access is provided by canal access road, which is a very narrow road

DJ - 12-20 feet wide

WR - pedestrian bridge was designed for pedestrian access for mill workers that lived in the Town and would walk to work every day
- Town has looked at replacing the bridge to make it accessible, or the other option is to install elevators at both ends of the bridge
- the Town would prefer to re-deck and paint the bridge

DJ - vehicle access had previously been strictly deliveries
- parking will be made available at the mill entrance, which is one-story down from the pedestrian bridge

WW - only talking about the pedestrian bridge

DJ - yes

- status of the building now

DJ - one employee a day within the building, the other mill close to the bridge is a working mill

WR - would like to redevelop the building for mixed use

DJ - bridge is owned by the power company
- bridge was an easement to the power company, and they would like to remove it, and therefore remove the "problem"; but the Town would like to negotiate ownership of the bridge to allow more access to the building
- \$870,000 to make the bridge accessible, just rehabbing it structurally is approximately \$400,000.00
- only 6 spaces proposed
- office use could be accommodated, but an assembly use would be an issue with parking

MB - if this is approved with no pedestrian accessible access, then no one requiring access would go to the building

DJ - (tape)

- WR - there is access provided to the mill, just up the river at the DCR center
- MB - bridge is owned by the municipality?
DJ - not yet, currently owned by the power plant
- DJ - two stairways, so technologically it is a problem
- third level of the building is accessible, since the lower two levels are below grade
- footbridge comes in at Level 4
- mill will have an elevator and be accessible on all floors
- MB - (TAPE)
- WW - distance from parking lot to the entrance
WR - within 300 feet
- MB - what is on the other side of the pedestrian bridge?
DJ - downtown Montague
- DJ - seven steps on the mill side; so ramping it would be a structural issue
- TH - mill needs some success before the work on the pedestrian bridge would be feasible
- CS - why the variance requested now
- DJ - power company refuses to fix the bridge; they are willing to give the bridge the Town, but with the intention to demolish it and rebuild it
- MB - premature to act on this matter
- DJ - seeking the variance for marketability
- \$800,000.00 to make accessible; \$400,000 to just make it safe
- WW - this would be different if a proposal was already in place
- RG - the Town doesn't own the bridge yet
- DJ - one proposal is to make the building artist lofts with retail at the first floor
- WW - yes, but nothing is set in stone as of yet
- have developer submit proposal for the building to the Board
- WR - chicken and the egg with the developer, no one will develop the site unless they know that they have access to the downtown area

CS - mill is not being used just yet, so once the use changes, would need an additional variance

MB - work on the bridge that is not going to an occupiable space, but since the bridge leads to the building; once the work is done, then will need to come back before the bridge

WW - need more detail about what is going to happen

MB - continue the matter until the Petitioners are able to submit more information about the project

AB - second - carries

31) Hearing: Tadpole Children's Boutique, 58-60 Clarendon St., Boston (V13-182)

WW - called to order at 3 p.m.

- introduce the Board

Eric Goldberg, Counsel for Tadpole Children's Boutique (EG)

David Hauck, Owner of Tadpole Children's Boutique (DH)

Thomas White, Architect (TW)

WW - all sworn in

- EXHIBIT 1 – AAB1-135

TH - letters of support from Boston City Councilors

WW - read October 3, 2013 letter from Bill Linehan, Boston City Councilor, District 2

- EXHIBIT 2

- read October 1, 2013 letter from Steven Murphy, President of the Boston City Council

- EXHIBIT 3

- read October 1, 2013 letter from Ayanna Pressley, At-Large Boston City Councilor

- EXHIBIT 4

EG - 475 square feet at the basement level to be used to display some furniture

- was allowed to go forward with the work, and was not made aware of the requirements of the Board to create access to the basement based on the change in use, until late in the project

- the building has been in use as a commercial use for a very long time

- asking for no access to the lower level and a variance for the front entrance

- full compliance at the entrance is technologically infeasible due to the requirement to go out onto the City sidewalk with a fully compliant ramp

- there are accommodation that are in place for people that use strollers and other wheeled devices other than wheelchairs

- would like to offer a temporary ramp, which the Petitioners feel would offer access at a much lesser cost to the owner

- have always had a temporary ramp and a history of helping patrons into the store

- DH - co-owner of Tadpole with wife
- established in 2006, started in 600 square feet and then moved down the street
- goal for the expansion
- need to stay competitive
- very inclusive development and design, would like to stay open and stay in the neighborhood
- EG - why the move?
- DH - \$11,000.00 spent on the current space, but the physical space was pretty much ready for business
- ran two stores for 2 years, and in 2011 moved everything into the current location
- when the two stores combined, decided to expand to the unfinished basement space
- EG - AAB73, cost of the work to do the staircase and finish the lower level
- accommodations in place?
- DH - since in business, 6-7inch step, plus threshold, and have always helped people get into the space
- could definitely be improved
- downstairs, all the products are online on the Tadpole website and there is a camera at the lower level
which could be moved to show someone the lower level products
- also have samples of the products and materials that are available to be brought upstairs
- TW - elevator would protrude into condo above the retail store
- lower level load bearing wall is in a different location and the installation of the elevator would bisect that load bearing wall
- existing slab of unknown thickness, and would create a ground water intrusion problem, but would not know the extent of the work required until it is analyzed further, which would require testing portions of the basement flooring
- approximately \$250,000 for elevator, not including any additional work that would be required for shoring up the installation of the elevator
- a LULA would also create an issue with the lower level slab and potential ground water intrusion problems
- also looked at a vertical wheelchair lift, would still need to be constructed in a shaft
- some degree of excavation would be required and would require structural reframing of the floor; the building would still need an upgrade as far as seismic
- vertical wheelchair lift would cost \$95,000, but does not include seismic, gravity load, or sprinkler upgrades
- incline lift at the existing stairs
- would need to widen the stairs by 14-16" and would require reframing the floor
- WW - deal with the vertical access issue first
- AB - where are the designs shown?
TW - AAB81-91

CS - only cribs at the lower level

DH - cribs, dressers, some crib sheets, generally corresponding items, with the smaller items repeated upstairs

CS - is there a written policy in place

DH - there is an employee handbook, and a lot is conveyed by word of mouth

CS - would like notification on website about visiting the store

MB - handrail on the stairs on both sides?

DH - one handrail

- why only one handrail?

DH - no reason known as to why only one handrail provided

CS - *grant the variance for the lack of vertical access to the lower level, on the condition accommodations, as demonstrated, are maintained; policy for employees about accommodations is submitted to the Board within 2 weeks receipt of the decision (by November 1, 2013); policy on the website; and replications of materials at the first floor when possible*

RG - *second – carries*

MB - *require compliant handrails at both sides of the stairs be installed by January 1, 2013*

GL - *second – carries*

TW - 6 ¼” step and 2 ¾” step up to the threshold

- first option looked at was a 1:12 sloped ramp, which would need to clear the abutments at the base of the exterior granite columns; would only allow 36” of space between the ramp and the tree

- would require approval from the City and the South End Landmarks Commission

- second option was to put the ramp within the store, would require lowering the door and reframing the floor, which would expose the rest of the problems with the framing which would require modifying

(TAPE)

TW - one consideration is the weight of the temporary ramp, which is out all day long

- but DH would like a lighter weight ramp that was easier to move

EG - intent is to have the temporary ramp be deployed at opening and removed at store closing

- temporary as opposed to permanently constructed, to save cost, since permanent ramp would be \$25,000

TW - still need to get approval to cut back the step from the Landmark Commission, which would be required to allow for the slope of the ramp

MB - what about permanently affixing the temporary ramp?

TW - would still require landmarks approval

CS - still a problem with the door swing even with the temporary ramp

DH - this policy for helping to open doors has been in place for years, due to the fact that the majority of the customers are coming in with strollers

CS - what about a door bell?

DH - there is a door bell there, but not used often

- but could make alerting the staff better

CS - was this run by the disability commission?

EG - did meet with Kathryn Aldrich

MB - based on the constraints of the space and the testimony that the store regularly accommodates people, and that the temporary ramp will be in place from store open to store close; grant the variance to 25.1 for the entrance, on the condition that there is better signage about the doorbell to notify the employees

CS - second – carries

No more MB, Jeffrey Dougan (JD) Designee for Mass. Office on Disability now present

32) Hearing: Harwell Homes, One Citizens Place, Cambridge (V13-210)

WW - called to order at 4 p.m.

- introduce the Board

CS - knows Mr. Klein but will no bias decision

JK - no objection to CS sitting on the Board

Jonathan Klein, Klein Hernig LLP (JK)

Jacob Taylor, Klein Hernig LLP (JT)

Susan Scalesse, Harwell Homes Co-Op

Jean Keegan, Harwell Homes VP of the Board (JK)

Anthony Renna, Harwell Homes Board Member (AR)

Gerry Joseph, Joseph Development, Inc. (GJ)

Renee Romano, Joseph Development Inc. (RR)

WW - all sworn in but counsel

- EXHIBIT 1 – AAB1-70

JK - submittal of memorandum

- JK
- thank you for scheduling the hearing on short notice
 - project is just beginning
 - would like to request the decision be expedited
 - original request from Mr. Joseph to the Board was made on September of 2012; decision rendered on October 15, 2012; more information submitted in November 2012; April 11, 2013 met with TH and were advised to submit the variance in lieu of waiting for the decision from the AG; preliminary approval and then formal application submitted, and granted a time variance, not a full variance which was requested
 - decision of the Board was to provide 2 units over time
 - still in opposition of the jurisdiction of the Board over this matter
 - this is a cooperative, therefore shares of the building sold and real estate is owned by the stock holders, which are the residents
 - the units can be transferred by an assignment of stock, and therefore exchange of right of occupancy
 - units can be mortgaged and shares can be pledged
 - tax benefits are allowed for these cooperatives
 - Harwell Homes, 56 residents elect the Board of Directors, and those are the individuals that make the decisions about the work on the property
 - residents do have the rights to make modifications to the interior of the unit, unless that they want them to be eligible for
 - read supreme judicial ruling into the record (tape)
 - would like the Board to acknowledge the lack of jurisdiction on this case
- JK
- in the alternative, should the Board reaffirm jurisdiction, would like an outright variance
 - the decision of the Board to provide 2 units over time would be an excessive cost without substantial benefit to persons with disabilities
 - cost of compliance would be \$51,200 per unit to create the accessible units, with the additional costs for the required upgrades totaling \$62,416 per unit.
 - there is no guarantee that if the units are developed, they may not be made available to people with disabilities, and the co-op has the right of first refusal and could chose to sell the unit a fair market value
 - modifications have been made to help shareholders that live within the units, such as adding handrails/grab bars, lowering cabinets, extra sound installation, and creating a ramp (AAB16 & 17)
 - the co-op would like to reserve the money for other modifications that may be required in the future
 - three turnovers in 5 years, 2 went to heirs and one went up for sale
 - low and moderate income cooperative, recently paid off the HUD funding
- GL
- currently all sold?
- JK
- no vacant units and no rented units
- AB
- reaction to Michael Muehe's letter, AAB5 & 6
- JK
- he was addressing the wrong issue, which may have been caused by the language that was provided on the original appeal

- issue is not that they are technologically infeasible, but that compliance would be an excessive cost without substantial benefit to persons with disabilities

AB - any word from the Attorney General's Office about interpretation?
TH - no

JK - modifications would greatly reduce the size of the units

JD - each unit is 650 square feet?
JK - yes

CS - two units when they become vacant was a soft resolution, but do understand about the reduced living space
- substantial benefit to increasing the housing stock, but in this case, can see how it is close to technologically infeasible

CS - *grant the variance based on the grounds of technological infeasibility*
RG - *second – carries*

33) Hearing: Harwell Homes, One Citizens Place, Cambridge (V13-210) – Cont'd

JD - *reopen*
GL - *second – carries*

JD - *expedite the decision*
AB - *second – carries*

RG not present

34) Discussion: Mixed Use Building, 299 Newbury St., Boston (V12-159)

TH - EXHIBIT – new submittal on 9/25/13
- did not address access to the retail spaces above the basement spaces
- November 1, 2012 deadline to submit analysis of 30% rule
- did not address the order of the Board to address the issue of common area compliance for the owner of the building

JD - *schedule a final hearing*
GL - *second – carries*

35) Incoming: Cunard Building, 120-126 State Street, Boston (V13-265)

TH - EXHIBIT – variance application
- mixed use building
- a number of variance requests

CS - *hearing*

JD - *second – carries*

36) Incoming: Conte School, 24 Church St., North Adams (V13-273)

TH - EXHIBIT – variance application
- 4 story building
- K-7 school, with new gym open to the public
- spending over 30%
- seeking multiple variance requests

CS - *hearing*

JD - *second – carries*

37) Incoming: Mandela Homes, 1855 Washington St. & 10 Hammond St., Boston (V13-258)

TH - EXHIBIT – variance application
- housing renovation project

CS - *hearing*

GL - *second – carries*

38) Discussion: Decisions and Minutes from 9/23/13

CS - *accept decisions and minutes for all but village park*

AB - *second – carries*

RG Back, no more GL

39) Discussion: Village Park Apartments, 497 East Pleasant St., Amherst (V13-181)

TH - EXHIBIT – 9/27/13 letter from Dom Marinelli
- list of spending and assessed value
- based on this, there is no jurisdiction to require group 2a, want some strong language to the code consultant about jurisdictional analysis required for all variances submitted

JD - *no jurisdiction to require Group 2a units and additional language about need to do jurisdictional analysis*

AB - *second – carries*

40) Discussion: Saugus Cross Walk

TH - slippery slope since it involved a suit with a woman being hit in the crosswalk

WW - do not want to get involved with the past

CS - *not going to make a decision unless a complaint is received to bring*

CS - *complies as currently designed*

AB - *second – carries with JD abstaining*

- End of Meeting -